

Scott Johnston

Ms. Wendy S. Wyels, Chief, Compliance and Enforcement Section
Ms. Sue McConnell, Senior WRCE
Regional Water Quality Control Board
Central Valley Region
11020 Sun Center Drive, Suite 200
Rancho Cordova, CA 95670-6144

VIA: Electronic Submission
Hardcopy if Requested

Re: Draft cleanup and abatement order, Rubicon Trail, El Dorado County

This Order requires the Discharger to:

1. Take all reasonable steps to cease the discharge of sediment and other wastes due to motorized use of the Rubicon Trail to waters of the state, including discharges to Gerle Creek, Ellis Creek, Loon Lake and its tributaries, and to the Rubicon River and its tributaries. This includes, but is not necessarily limited to, implementing all of the following.

It is important that the Regional Board recognize that EDC DOT has had control of the Rubicon Trail for a mere 7 or 8 months. Prior to that, control was in the Parks and Recreation Dept. It has seemed to me that from the beginning assigning this to Parks Department was a misstep. Developing a "park" type plan to manage and maintain a road did not appear appropriate. Furthermore, the RTMP included impractical measures such as concrete pads, camp facilities, helicopter landing pads, all on USFS land. How could a plan to maintain a road been so overdone? In 2008 control of the road was turned over to DOT. Since then cooperation with the USFS has increased and things are happening. Road maintenance is being performed. Bridges are being built. Fast tracked for this kind of project and with CEQA compliance. That is proof of commitment by the County to take responsibility for the Rubicon.

El Dorado County DOT has in a few months far exceeded the previous five years of work. Combined.

*2. Prepare and implement a vehicle use reduction plan on the Rubicon Trail to address vehicle use during wet weather conditions. This plan must address reducing or restricting wheeled motorized use during saturated soil conditions and over-the-snow travel until an operation and maintenance plan has been completed, approved, and mitigations implemented. This vehicle use reduction plan must be implemented during the wet weather period. The vehicle reduction plan shall be submitted to the Central Valley Water Board by **(12 weeks from signature)**.*

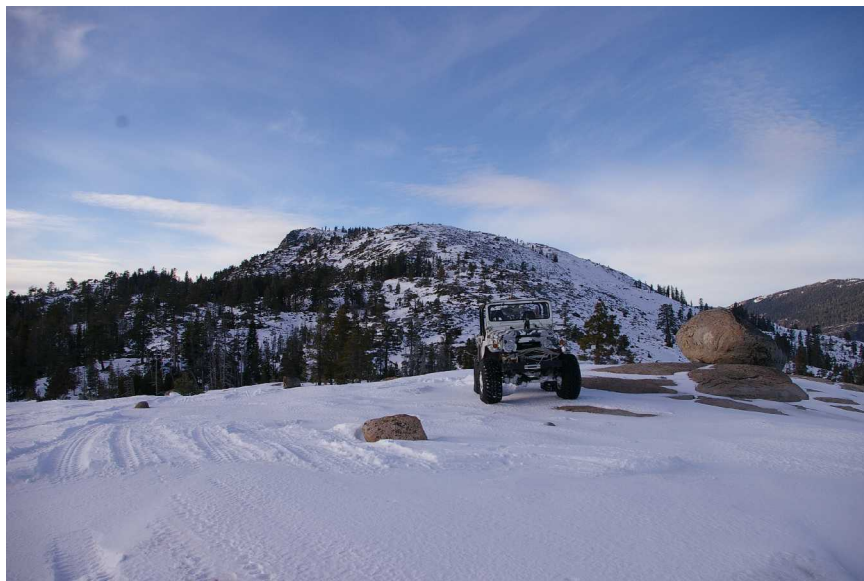
Over snow winter travel is naturally reduced by snow. There are a few hardy individuals, (myself included) that like to take on the hardships of surviving a trip to the High Sierra in the winter. I have a 15 year history of trail travel in all winter months and have extensive on the ground knowledge of how drifts form, where they form and what water is doing under the snow during the times when it is melting. Melt conditions can occur and can be slowed or stopped by continued weather and snowfall. The ground at that time, most likely is "not" saturated. Drifts are very consistent in their shape and location. Storms coming off the Pacific Ocean follow a general west-southwest to northeast pattern. They are primarily snow events

with little actual rainfall. For example the month of November can see rain as well as subzero temps.

It is an obvious fact that the Sierra Nevada Range is covered in a blanket of snow in the winter months. Just take a drive up highway 50 to Placerville on a clear February afternoon. Sometimes it can be 10 feet or more just like as I write this there is a new 5 feet near Echo Summit in the last 24-36 hours. There is an average of 5 feet or more on the Rubicon and it is generally a continuous blanket. This is January last year.



Sometimes, during sub-zero temperatures, the snow is near solid like this time In January 2007. The snow is only a few inches deep here and windblown drifts fill the voids in the rock.



There are times in winter when it is impossible to get to the Rubicon. That is a 100 percent reduction in use!! This is March 2006 on Wentworth Springs Road, approximately 25 miles from the Trail.



At it's recent Feb 2009 annual meeting, Friends of the Rubicon volunteers dedicated themselves to implement an information station at the trail heads during the time period of the greatest soil saturation. Friends of the Rubicon (FOTR) has for the last 4 years implemented a strategy that sends out a public message via internet recommending an alternate destination during "the melt" (the melt being that roughly 4-6 week period of snow reduction before summer heat) That message is for people that feel that they really need to go to the outdoors and recreate to consider an alternate destination. Like Moonrocks outside of Reno, NV or Prairie City SVRA or Hollister Hills SVRA or other such location until the conditions improve.

Unfortunately there is no real data on the success of this effort. Regardless, my observation has been that we have been effective in this. This is due to reading blogs and comments on the internet on these notices.

Also evident is the fact that the "melt" is not the same time every year. Analysis at the website cdec.water.ca.gov shows that a few weeks every year when the snow reaches a critical melting point, it becomes unstable and saturates the ground. Working with EDC DOT, Rubicon Trail Foundation can and will determine a time for melt season on an annual basis. Blanket closures are not effective in that they can reduce the socio economic impact to the County. EDC is a recreation based County and much of it's income is from businesses catering to the folks coming to the mountains to unwind and enjoy nature and recreate.

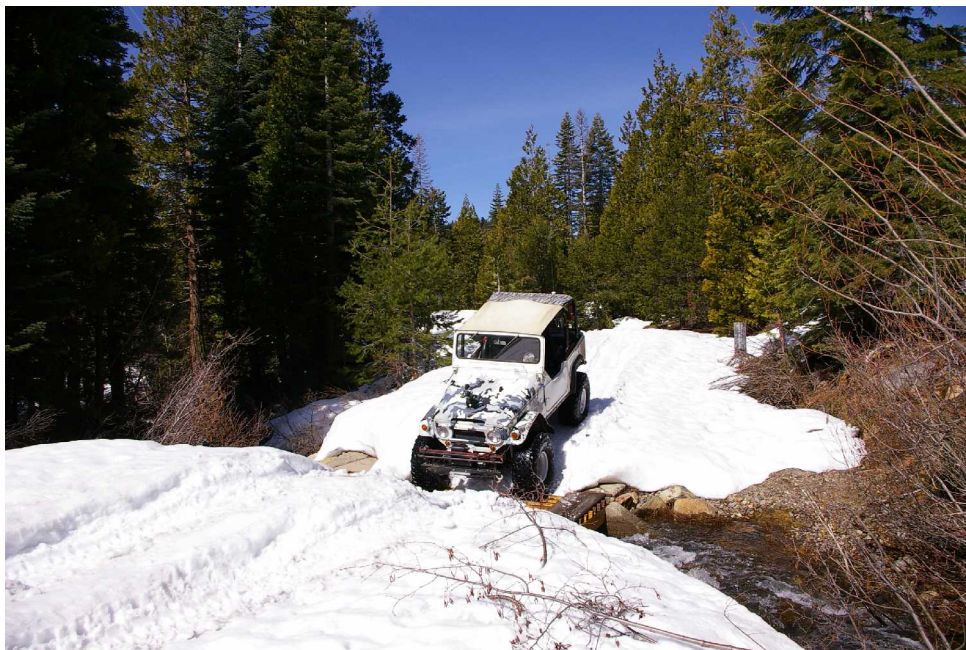
Rubicon is usually snowbound in late April. By May 31st, snow is melting or can be gone and conditions dry. May 6, 2006 I captured what I believe to be the snowpack right at the beginning of the "melt". Note the absence of color in the tire tracks. The lake is Spider Lake, well frozen over still.



This next picture shows a hardened rock section that is a natural drainage. Even with use, it has changed very little in my 16 years of observation. Again there is no color in the tire tracks. Snow is abrasive and scours the paint to a shine on the undercarriage. The other shows another angle in the same area. Water was beginning to run and this was my last trip for a few weeks.



Potential wet weather impacts can be easily remedied in the early summer to provide a hardened surface come the following spring. Rubicon Trail Foundation and Friends of the Rubicon have a long history of accomplishing this. There are many solutions available for water crossings much like this one near the trail head.



In fall, winter and spring, weather conditions can have water flowing over the trail. Sediment that may be stirred up will travel off the trail and will be dispersed over the forest floor which is covered in dead trees and duff. The recent CGS survey reflects this fact and has been my personal observation. This vegetation acts as a filter to capture sediment and stop it's progress to any water course. Crossings can and have been constructed not unlike the previous cattle guard picture to bridge any water courses that feed directly into water courses. This is May 2005, note the clean clear water. This is a rock base road with a time existence of decades. This road was constructed in the late 1800's and is in use to this day.



Over the snow travel by vehicles with a large tire footprint during snow conditions create a near zero impact situation. This is February 2006. This is quite a few feet of snow!!



3. By **(12 weeks from signature)**, submit an Operation and Maintenance (O&M) Plan to address sediment, human waste, and petroleum-based spills on the Rubicon Trail. The O&M Plan must describe how the Rubicon Trail will be managed to reduce future discharges of sediment, human waste, and petroleum products to waters of the state.

Please realize that EDC has been providing free oil spill kits to the public at the Loon Lake Kiosk. In 2005 they placed an all weather cabinet to provide a place for people to dispose of dirty absorbent materials and house the store of new kits. Friends of the Rubicon has been distributing these kits as well as County employees since 2003.

The O&M Plan must include a proposed timeline for each phase of the O&M Plan to be implemented. The O&M Plan shall be subject to approval by the Executive Officer. At a minimum, the O&M Plan must include the following elements:

- a) A trail assessment to identify sensitive water bodies to be protected (streams, lakes, ponds, and wetlands).*
- b) Using the trail assessment, prepare a list of projects to be implemented to protect the identified sensitive water bodies. This list shall be prioritized based on threat to water quality.*

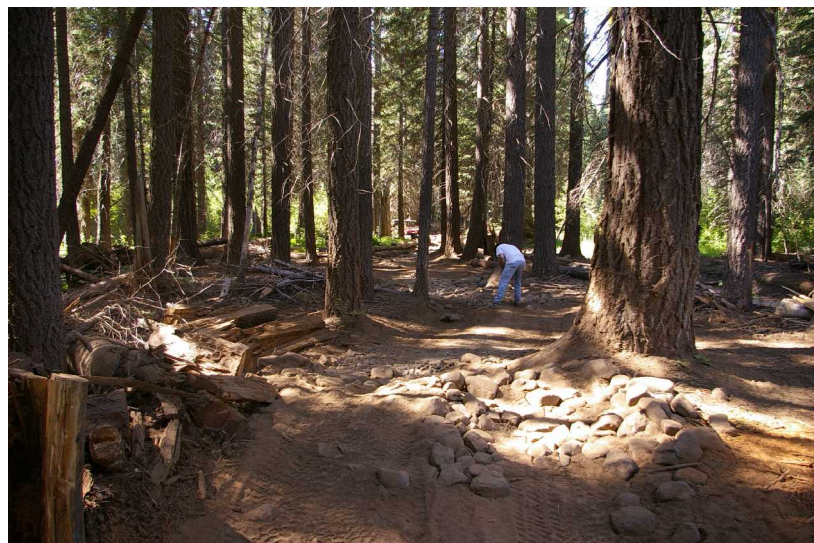
California Geological Survey recently completed and On Feb 12th presented to the Rubicon Oversight Committee a draft of an assessment of the trail and all points identified as needing water bars, maintenance or structures installed. This was done by CGS in cooperation with the OHV Division of California Parks. It was a two year project. The intent is to give EDC a play book for managing the trail. This to me looks like it will easily satisfy the above with the exception of a time line. A final copy is expected March 2009.

c) A proposal to legally record the Rubicon Trail easement and provide appropriate signage for users of the Rubicon Trail.

Rubicon Trail is a public right of way that predates the Forest Service. Would it not trump State/County rights for the Federal Government to override that? A GPS survey was done by the County and again recently by CGS. There is ongoing negotiation between the County and Forest Service in this matter. I expect to see results soon as both parties desire an outcome.

d) Operating procedures for constructing and maintaining road/trail drainage structures such as rolling dips, drainage dips, and lead-off ditches.

Friends of the Rubicon has been building drainage structures on the Rubicon for 9 years. We have great institutional knowledge and will partner well with EDC DOT to create innovative techniques based on sound practices of trail building found for example in Forest Service Manuals. Rolling dips, water bars, corduroy, and bridge structures are all in our knowledge base.



In 2003 we changed this:



To this. Even kids and girls are out there working and caring for this trail. This is Walker Hill work done in the summer. It is in great shape now.



The result of that project is that the CGS survey identified that the work done in that area successfully mitigated the potential for sediment to reach a waterway. Coupled with the work, sediment flows off the trail and is captured nearby in a flat area with trees and bushes. No red or yellow flags were identified on the survey for this stretch of trail. We were concerned with the incision problem in the area and glad to hear our efforts were effective. EDC DOT approved this project and all work was done by volunteers.

e) Operating procedures for constructing and maintaining stream crossings including rocked dips, rocked fords, culvert crossings and bridges.

Rubicon Trail Foundation is somewhat limited in what it can accomplish alone. Partnering with El Dorado County and Friends of the Rubicon will allow us to build the structures needed to cross watercourses. This impromptu bridge project in 2005 looks like this in winter. It was reinforced in 2006. It has a need to be a more formal crossing. Closer inspection revealed footings from a crossing constructed at a time previous to even many oldtimers memories!! That would put it circa 1920 or before!

Friends of the Rubicon can and will maintain this log bridge until a more suitable solution can be organized. This impromptu fix is a solution that can give several years of service before a replacement is needed.



f) Operating procedures for constructing and maintaining new trail segments, (once CEQA/NEPA has been fulfilled).

Rubicon Trail Foundation has been training it's volunteer leaders in organizational procedures for four years. They have been actively discussing training in construction techniques and look forward to working with the County on this issue. Being a public benefit organization, education is a prime directive. They, along with Friends of the Rubicon, look forward to working with the county to develop these procedures so we can most effectively utilize our volunteer resources.

g) Operating procedures for decommissioning road segments that are within stream zones or are unable to be adequately maintained to prevent sediment discharges to waters of the state.

h) Procedures for training of volunteer groups and county staff to install and maintain road drainage structures.

See above comment: One of the fastest ways to de-motivate a volunteer is to allow them to fail. Educating volunteers will allow them to work better, smarter and feel better about the work done. It enables a buy in to the project, a true win/win situation. Decommissioning road segments is a DOT function and they have all the tools needed to accomplish that goal if it is needed.

i) A permitting system for OHV users to determine use patterns and provide public education on the environmental issues associated with trail use, and if desired, to generate fees to finance management of the trail.

Any future permit system can not have any sort of number capacity. Current use estimates are unsupported. Given that the numbers were extrapolated from a single event and multiplied by an estimated 90-day use period, they appear to be high by as much as three times actual use. Rubicon Trail Foundation has applied for and is committed to funding a system of gathering use data that is accurate and will finally answer the numbers question. That will occur summer 2009.

Restricting use of a public road is in violation of the concept of a public road. A system that creates a point of contact should be an educational tool to be used to make the contact with the person driving to explain the rules much like a fire permit works with the Forest Service. That is it's prime purpose. Make the contact, educate the individual. Friends of the Rubicon and Rubicon Trail Patrol are dedicated to this effort.

j) A strategy to address human waste management on the Rubicon Trail. As permits are being obtained for the trail, the Discharger must communicate to users the importance of using portable human waste collection devices and "wag" bags. The Discharger must also enforce the use of portable human waste collection devices and "wag" bags. If education and enforcement does not address the human waste issues on the Rubicon Trail, the Discharger must reduce the use of the trail, especially during high use periods.

El Dorado County and Rubicon Trail Foundation have been and will continue to distribute WAG Bags free to the public since 2004. There is a current toilet facility grant request up for public comment with the OHV Division for a facility near Ellis Creek. Rubicon Trail Foundation has a complimentary grant request for servicing toilet facilities. Education has been

implemented, success is forthcoming and evident to those that have experience in the social climate on the trail. It may take a generation to change the social conscientiousness of the public. That change is already in motion.

k) Operating procedures for cleaning up petroleum contaminated soils on the Rubicon Trail.

l) Operating procedures to enforce the use of spill kits for containment of liquid and solid wastes generated from vehicle use on the Rubicon Trail.

I feel that a strong suggestion for vehicles to be equipped with spill kits and human waste collection devices is a good idea. I am not sure of the legality of making it a rule. Also, please be informed that the discussion of this sanitation issue goes back to the beginning of the Master Plan process begun in 2003. It was a consensus of the Rubicon Oversight Committee then, that a multi prong effort would be the most effective in regards to human waste. WAG bags, hauling it out, permanent toilet facilities, and continuing education in the use of these things is the best answer to this problem. Again the County, through OHV grants, has been providing free WAG bags to people on the trail for at since 2003.

I would like to see El Dorado County and Rubicon Trail Foundation dedicated to expanding that capability of disseminating information and distributing WAG bags and spill kits. What that looks like, needs to be determined, whether we put up displays in local stores or by simply being more efficient in trailhead contacts, an agreement with the County is needed.

m) Annual monitoring and reporting to assess the implementation and effectiveness of management measures.

All the critical erosion points that have been identified by the mapping layers in the CGS report will be available to the County. As the County assess and abates these specific areas, monitoring can be done on those points to evaluate the effectiveness of the remedy.

4. As soon as possible after approval of the O&M Plan and no later than (16 weeks from signature), begin implementing the approved O&M Plan.

5. By 30 September 2009, submit a report showing that the O&M Plan projects proposed for the season have been completed.

6. By 31 October 2009, submit the first annual report regarding trail use and maintenance activities conducted during 2009. Also report on the permitting system and strategies to address human waste and petroleum products.

7. By 30 September 2010, submit a report showing that installation of bridges at the Ellis Creek and the Gerle Creek crossings has been completed

A time line that is realistic is needed here. This board may not vote on this order until the window of opportunity for ground work for this season is half over. With deep snow in winter, a melt period that is elusive and a short summer, consideration must be made as to timing of this order and expected compliance. I am convinced EDC is willing to work towards compliance as soon as possible in these trying times of budget shortfalls and looming layoffs. Add to that a short season for actual work (three to four months) and careful consideration is in order.

Additional comments:

WC Section 13360 prohibits the Regional Water Boards from specifying, but not from suggesting, methods that a discharger may use to achieve compliance with requirements or orders. It is the responsibility of the discharger to propose methods for Regional Water Board review and concurrence to achieve compliance with requirements or orders.

Even with my the lengthy discussion above over the second item under the requirement part of this draft order, I feel it is not the place of the Board to demand a requirement for a vehicle reduction plan when, if the County can comply with the first demand to maintain the road so that there is no danger to the water of the State, it can come into compliance.

Personal Experiences:

While my expertise in life has been mostly in trade, I am an owner of a family run manufacturing business and am self taught in most of the things I excel in today.

I personally have spent at least 10 of the last 16 years aware of the trail, erosion, use patterns, and social impacts of gatherings on the Rubicon. It was then that I found myself on the trail sometimes alone except accompanied by one wheeling buddy. We discussed, observed and commented on the things we were facing. Unfortunately, he decided to move on to raising a family and other hobbies.

I went on continuing to traverse the trail 10-20 times a year after those first few. I have seen four feet or more of snow fall and was able to make my way home. I have been a fascinated observer of dry dirt in the middle of the melt, just a few millimeters under the surface. I have seen rain in summer months and heat enough to melt snow in winter. I have seen a full season of snow and rain do nothing to a tire track in the sandy track of the trail, leaving an imprint as prefect as it was months before. Little rain falls on the Rubicon it is mostly snow. I have worked the last 5 years as a paid guide on the trail, not to my financial benefit, supporting the tourism trade and meeting an international smörgåsbord of wonderful people from all over the world. I do this because I enjoy it.

This Rubicon Trail is an economic treasure for El Dorado County and the citizens that work in local businesses. Millions of dollars come in to this County's economic structure every year, generating much needed tax revenue. The Rubicon is a family destination that allows parents to bond with their children and provide much need guidance in times when gangs are abundant because of a lack of parenting skills. (see attached letter)





In 2003, I was faced with a tremendous problem in one particular spot on the trail. I decided it was time for action. I called FOTR and got involved in fixing that spot. (see pictures page 8) It was so satisfying to me that I kept on working on projects and attending government meetings about the trail. In 2004 Rubicon Trail Foundation was formed and we set about to keep this trail open and healthy year round. I personally feel this trail is a treasure in the off-road community that we can manage as a year round asset. We can mitigate any impacts to water and even attempt to mitigate potential impacts. As a practical person, for myself, fixing something that is not broken is nonsense, fixing something that has a potential to break is just plain maintenance and fixing that broken thing is common sense.

I feel we can set an example of how to properly manage and maintain a trail of this magnitude in a time of closure and more closure brought about by legal battles in the court room. Battles like this should be fought on the ground, not in the courts, making headway so that as our State expands its population, people have a place to go to unwind and be able to face the extreme challenges this economy puts on them when they return from a peaceful weekend in the High Sierra.

Our presence in the forest does not detract from the flora and fauna any more than the crowds at Yosemite or the family that wants to go camping in the woods. I can see that there is evidence of wildlife everywhere. Fish are populating the streams and bears are fishing too.

There will always be a portion of the population that needs to unwind in a rowdy manner and we see this on the Rubicon as well as any other place. Most of those folks do well to comply when the line is drawn and an understanding is reached about how far is too far. Our ranks of dedicated volunteers are intermixed with people we have made that kind of social contact with.

The bottom line is we have a legion of volunteers ready and willing to do what it takes to keep this trail open. We have a County willing to work with us and do the training and is already implementing most of the actions you are calling for in cleanup and abatement, prior to any draft order or staff visits to the trail. The volunteers are willing to work on the ground and with good science to provide a solution for the good of the Rubicon Trail.

It is my personal opinion that without an order, El Dorado County is going to take care of the treasure it has in the Rubicon trail. I know I am.

Comments submitted by Scott Johnston
Director, Rubicon Trail Foundation
Friend of the Rubicon
member Mountain Transit Authority 4WD club
member Blue Ribbon Coalition
member California Association of 4WD clubs

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some successes and facts about RTF, El Dorado County and FOTR

- *Rubicon Trail Foundation and Friends of the Rubicon have been working continually with both Placer and El Dorado County since 2000 to mitigate any and all concerns brought forth in regards to the trail.*
- *El Dorado County has completed, ongoing, and planned mitigation efforts with a range of volunteer individuals and organizations. The list to date is fairly long with much more planned.*
- *Winter traffic is naturally reduced from the numbers normally observed during the prime recreation season which is generally Memorial to Labor Day. FOTR has been actively advertising since 2003 not to go to the Rubicon during the melt.*
- *OHVs and stock 4x4s regularly run the trail with minimal conflict — for that matter, so do hikers, bikers, and hunters!*
- *No real carrying capacity has ever been established for the Rubicon, and all published usage numbers are disputed. If there were 350 vehicles accessing the trail during the three month summer period “every” day, that would be close to the 35,000 number posted. Since anyone that has ever been to the trail knows that is an impossibility, realistic usage numbers could be as low as a third of that.*
- *Trail usage has actually decreased since 2003, and users have also learned how to recreate with less impact. Rubicon Trail Foundation has worked to educate users. Realizing this kind of process can not happen overnight, a continued dedication to on trail contacts has significantly contributed to a better atmosphere on the trail.*
- *RTF, FOTR, and RTP have been working with El Dorado County to educate users and distribute sanitation samples and oil containment kits to them. Since 2003, El Dorado County has been supplying wag bags and spill kits to trail users. Rubicon Trail Foundation and the Trail Patrol have been a big part of distributing those products.*
- *California Geological Survey reported to the Rubicon oversight Committee on Feb12th 2009 and revealed a two year study that should provide a strong backbone for a management plan for the trail.*
- *The Rubicon Trail is a vital and profitable engine that adds significant economic value to hundreds of businesses in El Dorado and Placer Counties. Closing the trail or in any way restricting access would significantly and negatively impact businesses in both counties.*

Rubicon Trail Foundation and Friends of the Rubicon work well together, and have successfully partnered with El Dorado County, Placer County, El Dorado National Forest, Tahoe National Forest, the Lahontan Regional Water Quality Board, and the Off-Highway Motor Vehicle Recreation Division. I’m sure we can work together with the Central Valley Regional Water Quality Board, as well, and assist the Water Quality Control Board in finding solutions to the challenges outlined in the CAO.